

**Lac du Flambeau Band of Lake Superior Chippewa
Indians**

**Clean Water Act Section 303 and 401
Program Eligibility Application
"Treatment as a State"**





LAC DU FLAMBEAU BAND

OF LAKE SUPERIOR

CHIPPEWA INDIANS

TRIBAL NATURAL RESOURCE DEPARTMENT

P.O. BOX 67

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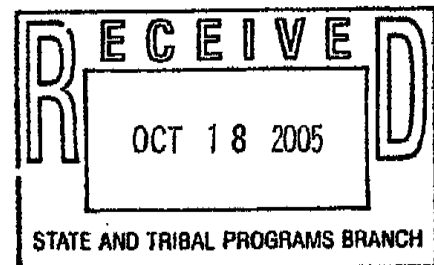
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Fish Culture - Fisheries Management - Wildlife Management - Water Resources - Environmental Protection - Conservation Law Enforcement - Parks & Recreation

October 12, 2005

Jo Lynn Traub
Director, Water Division, Region 5
United State Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604-3590



Re: Lac du Flambeau Clean Water Act Sections 303 and 401 program eligibility application

Dear Director Traub:

On behalf of the Lac du Flambeau Band of Lake Superior Chippewa Indians, I enclose with this letter the Band's application for treatment as a state under sections 303 and 401 of the Clean Water Act. This application includes the enclosed 1) Summary of the Lac du Flambeau Band of Lake Superior Chippewa Indians' Treatment-as-a State Application for Designation under Sections 303 and 401 of the Clean Water Act, and 2) Attachments A-AT. The documents submitted here comprise the Band's full submission.

After review of the U.S. EPA's June 2000 list of supplemental information needed for final review of the application, we updated the application accordingly. We have included a table of contents and a cover sheet for each attachment for your convenience.

To demonstrate Tribal technical capacity to manage a water quality standards program, a revised draft of the water quality standards is also included in the package. All comments contained in the January 12, 2004 letter from EPA regarding the review of the LDF Water Quality Standards have been addressed.

In addition to the 1999 resolution passed by the Lac du Flambeau Band of Lake Superior Chippewa Indians Council, Lac du Flambeau Band of Lake Superior Chippewa

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Indians Executive Board reviewed the revised application on August 10, 2005, during regular session, and endorsed the application. That approval is enclosed as Attachment AT.

Thank you for your assistance during this process. We look forward to finalizing this step in obtaining Clean Water Section 303 and Section 401 program eligibility.

If you have any questions, please contact myself or Gretchen Watkins, our Water Quality Specialist, at (715) 588-3303.

Sincerely,



Larry Wawronowicz
Deputy Administrator Natural Resources

Enclosure

SUMMARY OF THE LAC DU FLAMBEAU BAND OF LAKE SUPERIOR CHIPPEWA INDIANS' TREATMENT-AS-A STATE APPLICATION FOR DESIGNATION UNDER SECTIONS 303 AND 401 OF THE CLEAN WATER ACT.

October 12, 2005

In recognizing its responsibility to protect and enhance the resources of the Lac du Flambeau Band of Lake Superior Chippewa Indians, the Lac du Flambeau Executive Board desires to apply for Treatment-as-a-State designation under the Clean Water Act (CWA). Pursuant to CWA Section 518, the Lac du Flambeau Tribal Council wishes to expand the tribe's regulatory authority to operate water resource management programs. **The Tribal Council wishes to receive Treatment-as-a-State authority under Sections 303 (Water Quality Standards) & 401 (Water Quality Certification) of the CWA.** This authority expansion would be applicable to all waters within the exterior boundaries of the Lac du Flambeau Indian Reservation (See map & narrative, Attachments A & O.2.1). Waters which are located directly on the reservation boundary (the boundary is described in Attachment O.2.1) would be required to meet Tribal Water Quality Standards only on that portion of the waterbody which is located within the exterior boundaries of the Lac du Flambeau Indian Reservation. While it is the Band's decision to apply for Treatment-as-a-State designation as a necessary tool to implement the CWA, *this action does not diminish the Band's status as a sovereign nation.*

Currently, the Lac du Flambeau Band of Lake Superior Chippewa has Treatment-as-a-State designation to receive funding from Sections 106 & 314 of the CWA. As the Lac du Flambeau environmental management program expands, so does the ability to effectively implement new programs. The Lac du Flambeau Chippewa are the best managers of the water resources on the Lac du Flambeau Indian Reservation. Due to the subsistence lifestyle that is widely practiced by members of the Band, as well as special cultural and spiritual uses of water, Tribal waters require more stringent water quality regulations than those of the surrounding "State" regulated waters. The value of Water Quality Standards that protect the Band's valuable water resources cannot be overstated.

This application is designed to supply the information necessary to receive Treatment-as-a-State designation under Sections 303 & 401 of the CWA. Therefore, the application will only briefly address areas already covered in Treatment-as-a-State applications for Sections 106 and 314.

Federal Recognition

The Lac du Flambeau Band of Lake Superior Chippewa Indians is a Federally recognized Indian tribe. See Lac du Flambeau Treatment-as-a-State application for Section 106 of the CWA dated February 21, 1990; 53 Fed. Reg. 52829, 52830 (Dec. 29, 1988). The Statement of Legal Counsel is contained in Attachment B. A copy of the supporting Lac du Flambeau Tribal Council Resolution No. 625 (99), for the initial (Section 106) Treatment-as-a-State process is also included. See Attachment C. Copies of the Treatment-as-a-State approval letters for Sections 106 and 314 have been included in Attachments D and E respectively. A copy of the Lac du Flambeau Band of Lake Superior Chippewa Indians Constitution and Tribal Court Code have been included as well. See Attachment F.

Tribal Administrative Capability

The accounting system and related internal control systems of the Band are examined annually by an independent auditor pursuant with the standards set forth in 25 C.F.R. § 276.7 and Federal Management

Circular 74-4. Wipfli, Ulrich, Bertelson CPAs completed the most recent examination and it has been included with this application. Attachment G.

Organizational Structure

The Band's organizational structure is described in Attachment H.

The organization of the Tribal Natural Resource Department has been adjusted to account for the expansion of the program. Since this Department will be primarily responsible for implementing the Section 303 & 401 programs, on direction from the Lac du Flambeau Tribal Council, this Department's structure has been illustrated in Attachment I.

401 Certification and the Water Quality Standards Program

The individuals operating the Water Quality Standards program will be the Water Resource Program personnel of the Lac du Flambeau Tribal Natural Resource Department.

The Water Resource Specialist, operating under the direct supervision of the Tribal Natural Resource Department will be the primary individual responsible for managing the 401 Certification and Water Quality Standards Programs. All issuances of Water Quality Certification, however, will receive final approval by the Tribal Natural Resource Director. The Tribal Natural Resource Director will make this determination based upon input received from the applicant and various Tribal Natural Resource Personnel, including, but not limited to, the Water Resource Specialist, and the Environmental Specialist. The 401 Certification process, Attachment J, as described in the Band's proposed Water Quality Standards would be used to determine 401 Certification and dispute resolution.

The Lac du Flambeau Water Resource program has been in operation since 1990 and was added to the existing programs in the Department with the primary objectives of obtaining authority for various programs within the Clean Water Act. Initially this process began with a water quality inventory of over 90% of the Reservation's surface water resources.

Tribal Natural Resource Department Capability

Currently, the Water Resource Specialist is Ms. Gretchen Watkins. Ms. Watkins has been with the Tribal Natural Resource Department since September of 2004. A copy of her most recent resume has been included in Attachment L. In addition to Ms. Watkins, the Water Resources Program contains two full-time water resource technician positions currently held by Mr. Terry Allen and Mr. John Brown. Terry Allen has been employed over 10 years and John Brown has been employed 7 years for the Water Resource Program. The duties of water resource technicians include field and office work associated with various water resource projects. Past and present projects include: Baseline Inventory Project, Eutrophication in Lakes Project, U.S. EPA Clean Lakes / Acidification Project, L.D.F. / U.S. Army Corps of Engineers Cranberry Operations Discharge Project, Mercury in Fish Project, L.D.F. / U.S.G.S. Gauging station at the Bear River, and the Paleoenvironmental History of Ike Walton & Zee Lakes. Attachment K. In addition, in 1993, 1999, and 2004 the Lac du Flambeau Water Resource Program received full approval from the U.S. EPA Region V Quality Assurance Chief, for Quality Assurance Project Plans (QAPPs) for the purposes of water quality monitoring. Lac du Flambeau staff worked closely with the U.S. EPA in order to receive official approval of these plans.

Ms. Watkins, Mr. Brown, and Mr. Allen will be operating the Water Resource Program (of which the Water Quality Standards Program will be an integral part) under the direction of Mr. Larry J.

Wawronowicz, Natural Resource Director, and Ms. Dee Mayo, Environmental Specialist. See Attachment L (resumes). The Tribal Natural Resource Department is directed to fulfill the management objectives of the Tribal Membership through the supervision of the Tribal President and the Lac du Flambeau Tribal Council.

The Band through the U.S. EPA 106 program employs the Water Resource Specialist. The Water Resource Technician positions are funded through BIA P.L. 93-638 contract monies, U.S. EPA 106 program and general funds monies. The Tribal Environmental Specialist, who is employed by the Band through an Indian General Assistance (Multi-Media) grant will not be directly involved in conducting the Water Quality Standards Program. The Environmental Specialist may, however, be consulted as various environmental questions arise.

Trust Lands Within Current Reservation Boundaries

The Lac du Flambeau Band of Lake Superior Chippewa Indians will maintain full Water Quality Standards authority over all lands and waters within the exterior boundaries of the Lac du Flambeau Indian Reservation. This jurisdictional authority will extend to property owned by non-tribal members within the exterior boundaries of the Lac du Flambeau Indian Reservation (In addition to tribal and allotted land).

Trust Lands Outside Current Reservation Boundaries

At the present time the Lac du Flambeau Band of Lake Superior Chippewa Indians does not own trust lands outside of the existing reservation boundaries. If in the future, the Band acquires or requests trust land outside of its current boundaries, the Band may seek a Memorandum of Understanding with the state involved regarding water quality jurisdiction. Each case would be examined individually by the Tribal Natural Resource Department and the Tribal Council to determine if the Tribe would seek a Memorandum with the adjacent state or would claim tribal water quality jurisdiction.

402 Certification, the NPDES Permit Process, and the adoption of additional programs

In the initial Treatment-as-a-State process for Water Quality Certification and Water Quality Standards, the Lac du Flambeau Chippewa will not seek authority under Section 402 of the CWA. The ability to issue National Pollutant Discharge Elimination System (NPDES) permits would then remain with U.S. EPA's. After the Band gains the 401 Certification and Water Quality Standards authority, the adoption of further Clean Water Act programs will proceed as deemed necessary by the Lac du Flambeau Tribal Council.

Additional Direction and Authority

The *Lac du Flambeau Integrated Resource Management Plan for the Years 1991-2001*, Attachment M, was approved in 1991. Public input from Tribal members, resource managers, and the Tribal Council was utilized to identify issues, concerns, and opportunities. Goals and objectives were then derived from the issues, concerns, and opportunities. One such goal was the adoption of Tribal Water Quality Standards. LDF IRMP pp. 43-49, Attachment M. A new Lac du Flambeau Integrated Resource Management Plan is in the process of being drafted and is expected to be completed in 2005. Various natural resource codes have been adopted and implemented under the authority of the Lac du Flambeau Tribal Council. Copies of all current natural resource codes have been included in Attachment N. A report entitled "Actual and Threatened Impacts on the Surface Waters Within the Exterior Boundaries of the Lac du Flambeau Reservation from Activities on Non-member Owned Fee Lands" has been included for the purpose of providing additional information relevant to Tribal jurisdiction. Attachment O.

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2. Lac du Flambeau Reservation, including Reservation location to Wisconsin (new)
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4. Ownership (new)
5. Facilities on the Lac du Flambeau Reservation (new)

ATTACHMENT B

Statement by the Band's Legal Counsel

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Resolution # 625 (99) (Nov. 22, 1999)

ATTACHMENT D

106 Treatment as State Approval letter from US EPA (May 28, 1990)

ATTACHMENT E

314 Treatment as State Approval letter from US EPA (June 9, 1992)

ATTACHMENT F

Constitution and Bylaws of the Lac du Flambeau Band of Lake Superior Chippewa Indians Tribal Court Code (new)

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Independent Auditor's Report

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Tribal Governmental Organizational Structure

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Department of Natural Resources Organizational Chart of Water Quality Standards Implementation Principles

ATTACHMENT J

Proposed 401 Certification Process (draft)

ATTACHMENT K

Water Quality and Quantity Reports for Reservation Waters

Attachment K continued

1. Lac Du Flambeau Band of Lake Superior Chippewa Indians. 1992. Fiscal Year 1992 Final Report: Ike Walton Lake Water Quality Assessment. Lac Du Flambeau, WI.
2. Lac Du Flambeau Band of Lake Superior Chippewa Indians. 2000. Environmental Changes in the Last Century in Little Trout Lake, Inkspot Bay, Great Corn and Little Corn Lakes, Lac du Flambeau Tribal Lands, Wisconsin. Lac Du Flambeau, WI. (referenced as UW Wisconsin 2000).
3. Lac Du Flambeau Band of Lake Superior Chippewa Indians. 2002. Yearly Progress Report: Bureau of Indian Affairs Water Resources, September 2001-August 2002. Lac Du Flambeau, WI.
4. Lac Du Flambeau Band of Lake Superior Chippewa Indians. 2003. Yearly Progress Report: Bureau of Indian Affairs Water Resources, September 2002-August 2003. Lac Du Flambeau, WI.
5. University of Wisconsin-Madison, Dr. Winkler, Marjorie G. 1996. The Paleoecology and pH History of Ike Walton Lake and Comparison with the Recent History of Zee Lake. Center for Climatic Research Institute of Environmental Studies. Madison, WI. (referenced as Winkler).
6. U.S. Army Corps Of Engineers. 2000. Great Corn and Little Corn Lakes Section 22: Water Quality Study. St. Paul District. (referenced as USACE 2000).
7. U.S. Army Corps Of Engineers. 1996. Little Trout Lake Section 22 Phase 1: hydrologic and Water Quality Review and Study Recommendations. St. Paul District. (referenced as USACE 1996).
8. U.S. Environmental Protection Agency, Region V. Simon, Thomas P., M. A. Anderson. 1989. In stream Fish and Benthic Macroinvertebrate Water Quality Evaluation: Trout River Drainage, Vilas County, Wisconsin. Central Regional Laboratory, Chicago, IL.
9. U.S. Environmental Protection Agency, Region V, Sutherland, Don. 2002. Pesticide Use on and Around Tribal Lands.
10. U.S. Geological Survey. 1996. Water Resources of the Lac Du Flambeau Indian Reservation, Wisconsin 1981-86. (Water-resources Investigations Report 94-4025). Madison, WI.

11. Weinstein, Sasha. 1994. *Mercury in Ike Walton Zee Lakes, Lac du Flambeau Indian Reservation, Northcentral Wisconsin*. Unpublished bachelor thesis, Brown University, Providence, RI.

ATTACHMENT L

Resumes of Water Quality Standards Implementation Principals

1. Gretchen Watkins, Water Resource Specialist (new)
2. Larry Wawronowicz, Administrator of Natural Resources (new)
3. Dee A. Mayo, Environmental Specialist
4. Terry L. Allen, Water Resource Technician
5. John Brown, Water Resource Technician (new)

ATTACHMENT M

Integrated Resource Management Plan

ATTACHMENT N

Current Natural Resource Codes

1. Conservation Code, Chapter 20
2. Timber Trespass Code, Chapter 22
3. Reservation Water and Shoreline Protection and Enhancement Ordinance, Chapter 23
4. Tribal Solid Waste Code, Chapter 24
5. Boat, Snowmobile and ATV Registration Ordinance, Chapter 25
6. Boating Safety Ordinance, Chapter 27
7. Protection and Management of Archaeological, Historical, and Cultural Properties and Cultural Resources, Chapter 66
8. Water Quality Standards, Chapter 28
- 8(a). Draft Revised Water Quality Standards

ATTACHMENT O

Actual and Threatened Impacts on the Surface Waters Within the Exterior Boundaries of the Lac du Flambeau Reservation from Activities on Non-member Owned Fee Lands

ATTACHMENT P

Testimonials from Tribal Members

1. Ernie St. Germaines
2. John "Archie" Edwards Jr.
3. Glory Allen
4. Hank Schuman
5. Mildred Tinker Schuman

ATTACHMENT Q

Carpenter, S. R., N. F. Caraco, D.L. Correll, R. W. Howarth, A. N. Sharpley, V. H. Smith. 1998. Non-point Pollution of Surface Waters with Phosphorus and Nitrogen. *Ecological Applications*, 8(3): 559-567.

ATTACHMENT R

Garro, L. 1995 Individual or Societal Responsibility? Explanations of Diabetes in an Anishinaabe (Ojibway) Community. *Social Science & Medicine* 40(1): 37-46.

ATTACHMENT S

Goc, M., Guthrie, B. 1995. *Reflection of Lac du Flambeau, An illustrated History of Lac du Flambeau, Wisconsin 1745-1995*. Friendship, Wisconsin: New Past Press Inc. (Excerpts p. 11-17, 19-24 & 33-39).

ATTACHMENT T

Gutierrez, M., M. Akhavan, L. Javanvic, C. Peterson. 1998. Utility of a Short-Term 25% Carbohydrate Diet on Improving Glycemic Control in Type 2 Diabetes Mellitus. *Journal of the American College of Nutrition* 17(6): 595-600.

ATTACHMENT U

Johnston, C.A. 1994. "Cumulative Impacts to Wetlands". *Wetlands*. 14(1): 49-55.

ATTACHMENT V

William J. Mitsch, et al., *Wetlands* (John Wiley and Sons, Inc., 1993 ed.) (Excerpts p. 367, 388).

ATTACHMENT W

Kratz, T. K., D. W. Bolgrien, S. Cablin, Julie O'Leary. 2002. Human Influences on the Spatial Distribution of Coarse Woody Debris in Lakes in Northern Wisconsin, USA. *Verh Internat. Verein. Limnol.* 28: 545-548.

ATTACHMENT X

Meeker, J. 1999. The Ecology of "Wild" Wild Rice (*Zizania Palustris* Var. *Palustris*) in the Kakagon Sloughs, A Riverine Wetland on Lake Superior. *Proceedings of the Wild Rice Research and Management Conference: Carlton, Minnesota, Great Lakes Indian Fish and Wildlife Commission.* 68-83.

ATTACHMENT Y

National Research Council, 1992. *Restoration of Aquatic Ecosystems*. — National Academy Press, Washington, D.C. (Excerpts p. 74-107).

ATTACHMENT Z

Nichols, S. A. 1994. Evaluation of Invasions and Declines of Submersed Macrophytes for the Upper Great Lakes Region. *Lake and Reservoir Management* 10(1): 29-33.

ATTACHMENT AA

Vilas County Economic Report. 2003.

ATTACHMENT AB

Pfaff, T. 1993. *Paths of the People, The Ojibwe in the Chippewa Valley Eau Claire, WI: Chippewa Valley Museum Press.* (Excerpt p. 18).

ATTACHMENT AC

Thomas, A.G., Stewart, J. M. 1969. The Effect of Different Water Depth on the Growth of Wild Rice. Canadian Journal of Botany. 47: 1525-1531.

ATTACHMENT AD

Tynan, T. 1999. Testing the Effects of Motorboat on Wild Rice (*Zizania Palustris* Var Interior). Proceedings of the Wild Rice Research and Management Conference: Carlton, Minnesota, Great Lakes Indian Fish and Wildlife Commission. 192-205.

ATTACHMENT AE

Watras, C. J., R. C. Back, S. Halvorsen, R. J. M. Hudson, K. A. Morrison, S. P. Wente. 1998: Bioaccumulation of mercury in pelagic freshwater food webs. The Science of the Total Environment 219: 183-208.

ATTACHMENT AF

Wisconsin Conservation Department (WCD), Surface Water Resources of Vilas County. 1963. (Excepts p. 34, 130, 232, 316).

ATTACHMENT AG

Brief of Federal Appelles, Wisconsin v. EPA, No. 99-2618 (7th Cir. filed Sept. 21, 2000).

ATTACHMENT AH

Edmund Jefferson Danziger, Jr., The Chippewas of Lake Superior (Univ. of Okla. Press 1979) (Excerpt p. 91).

ATTACHMENT AI

Ronald N. Satz, Chippewa Treaty Rights, The Reserved Rights of Wisconsin's Chippewa Indians in Historical Perspective (Wis. Academy of Sciences, Arts and Letters 1991) (Excerpts p. 1-11).

ATTACHMENT AJ

Elizabeth M. Tornes, ed., Memories of Lac du Flambeau Elders (Bd. Of Regents at Univ. of Wis. System 2004).

ATTACHMENT AK

Thomas Vennum, Jr., Wild Rice and the Ojibway People (Minn. Historical Society Press 1988) (Excerpts p. 20-28 & 58-80).

ATTACHMENT AL

Pillsbury and Bergy, The Effects of Root Mass and Disturbance of Wild Rice (*Zizania Aquatica*) Survivorship. 206-214.

ATTACHMENT AM

Letter of Earl A. Russell to Mr. Irso (Sept. 26, 1994).

ATTACHMENT AN

Leonardo Trasande, Philip J. Landrigan and Clyde Schecter, Public Health and Economic Consequences of Methyl Mercury Toxicity to the Developing Brain, 113 Env. Health Perspectives 5 (May 2005). 590-596.

ATTACHMENT AO

James E. Meeker, et al., Plants Used by the Great Lakes Ojibwa (Great Lakes Indian Fish and Wildlife Commission 1993). (Excerpts vi, 196, 202).

ATTACHMENT AP

Wisconsin Department of Natural Resources (WDNR), Wisconsin Lakes. 2001. (Excerpts 6-7, 146-150).

ATTACHMENT AQ

Schindler, Daniel E., et al., Patterns of Fish Growth along Residential Development Gradient in North Temperate Lakes, Ecosystems. 2000. 229-237.

ATTACHMENT AR

Sonesten, Lars, Environmental Influence on Hg and ¹³⁷Cs Levels in Perch (*Perca Fluviatilis* L.) and Roach (*Rutilus rutilus* L.) from Circumneutral Lakes. Act a Universitatis Upsaliensis. 2000.

ATTACHMENT AS

Home, Alexander J., and Charles R. Goldman, Limnology. McGraw-Hill Inc. second edition. 465-468.

ATTACHMENT AT

Letter from Victoria A. Doud, President Lac du Flambeau Band of Lake Superior Chippewa Indians, to Jo Lynn Traub, Director, Water Division, Region 5 EPA (Oct. 12, 2005).